759

SUPREME COURT OF THE UNITED STATES.

No. 130.

THE PHILADELPHIA, WILMINGTON, AND BALTIMORE RAILROAD COMPANY, PL'FFS IN ER.,

vs.

PHILIP QUIGLEY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DIST. OF MARYLAND.

INDEX.

	Original.	Print.
Summons	1	1
Declaration	2	2
Marshal's return	7	5
Rule plea	7	5
Plea and issue	9	6
Jury, verdict, and judgment	10	7
Defendant's exception	11	7
Evidence of J. J. Cohen	11	7
Evidence of John Street	12	8
Evidence of William Crawford	13	8
Evidence of ———— Woodruff	13	9
Evidence of James H. Bryson	14	9
Evidence of Alfred Horner	14	9
Cross-examination	15	10
Extracts from the minutes, 9 January, 1854, March 14, 1854, April 20, 1854	16	10
Evidence of Isaac R. Trimble	16	11
Cross-examination	18	11
Evidence of William Graves	19	12
Letter from S. M. Felton to J. T. Mahony, 3d March, 1854	21	13
Letter from J. T. Mahony to S. M. Felton, 3 March, 1854	21	14
Extract from page 3, vol. 1	22	14
" " " 272, "	23	15
" " " 382, "	28	18
Letter from W. S. Swift to Mr. Trimble, 19 Decr., 1853	29	18

Extract from page 694, vol. 1	31	19
" " " 966, "	32	20
" " " 225, " 2	33	20
Extract from 17th Annual Report	35	22
Evidence of J. J. Cohen, Enoch Pratt, Columbus O'Donnell, Joseph C. Gilpin, and Thomas Donaldson	36	22
Evidence of John T. Mahony	37	23
Evidence of Baldwin Keech	39	24
Evidence of Alexander Kelly	40	24
B. Articles of union, &c.	41	25
C. Articles of union, &c.	46	28
Defendant's prayers	50	30
Court's instructions	53	32
Writ of error	55	33
Citation	57	34
Writ of error bond	58	34
Clerk's certificate	59	35

THE UNITED STATES OF AMERICA.
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the honorable William F. Giles, judge of Maryland district; William H. Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

PHILIP QUIGLEY
vs.
THE PHILADELPHIA, WILMINGTON and Baltimore Railroad Company.

Be it remembered that heretofore, to wit, on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and fifty-four, Philip Quigley, by Reverdy Johnson, and H. Winter Davis, his attorneys, prosecuted and sued forth, out of the circuit court here, the writ of the United States of America of capias ad respondendum against the Philadelphia, Wilmington and Baltimore Railroad Company, directed to the marshal of the Maryland district aforesaid, in form following, to wit:

Summons.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

[SEAL.] We command you, that you summon the Philadelphia, Wilmington and Baltimore Railroad Company, a corporation resident in Maryland, that all excuses and delays set aside, it be and appear before the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in April next, to answer unto Philip Quigley, a citizen of the State of Delaware, in a plea of trespass on the case, &c.; hereof you are not to fail at your peril, and have you then and there this writ. Witness the honorable R. B. Taney, chief justice of our Supreme Court, the

first Monday in December, in the year of our Lord one thousand eight hundred and fifty-four.

THO. SPICER,
Clk. Circ't Ct.

R. J.
H. W. D.

Issued 29th Dec'r, 1854.

Afterwards, to wit, on the tenth day of March, in the year of our Lord one thousand eight hundred and fifty-five, the said Philip Quigley, by his attorneys aforesaid, declared against the said Philadelphia, Wilmington and Baltimore Railroad Company in the plea aforesaid, in form following, to wit:

Declaration.

In the circuit court of the United States for the district of Maryland.

PHILIP QUIGLEY

vs.

THE PHILADELPHIA, WILMINGTON and Baltimore Railroad Company.

The Philadelphia, Wilmington and Baltimore Railroad Company, a body corporate in the State of Maryland, incorporated by a law of the General Assembly of Maryland, was summoned to answer Philip Quigley, a citizen of the State of Delaware, in a plea of trespass on the case.

And thereupon the said Philip Quigley, by his attorneys, Reverdy Johnson and Henry Winter Davis, complains, that whereas the said plaintiff is, and for many years prior to the time of the committing of the grievances hereinafter alleged, to wit, prior to the third day of March, in the year 1854, a competent and skillful mechanic, engaged in the business of contracting for the construction of, and in the building, making or constructing of depots, station-houses, bridges, warehouses, and other structures of a costly character and magnitude, for railroad companies and other persons and corporations in divers of the United States, and more especially in the States of Pennsylvania, Delaware, New Jersey, and Maryland, and in such business was widely known both in and beyond the limits of those States, and recognized among people and companies of the character aforesaid having need for the construction or repair of bridges, station-houses, warehouses, depots, and other such buildings, as a person eminently skilled in and competent to conduct the construction of and to construct such and similar works of the first class, and who had conducted the

construction of such works for divers persons and companies with credit and ability; and whereas the said plaintiff was so known not only to the public generally and to other companies to be a competent and skillful mechanic, as in manner aforesaid, but also such his said character was well known at and prior to the committing of the grievances hereinafter mentioned to the said defendant, in whose employment the said plaintiff had long and frequently been before that time in the construction or repair of works and buildings such as aforesaid, and more especially the said plaintiff had been before that time employed in the construction of the roof of a certain large depot at the corner of Broad and Prime streets, in the city of Philadelphia, in which said work the plaintiff had acquitted himself with competent skill and ability as a mechanic engaged in such work, with the full knowledge of the defendant; and while the plaintiff was engaged on the said depot, one John T. Mahoney was employed as the civil engineer to superintend the construction of the said roof of the said depot, which said depot and which said John T. Mahoney are the same mentioned in the libellous publication hereinafter stated; and whereas at the time of the publication of the libel hereinafter stated, one Samuel M. Felton was, and for a long time prior thereto had been, and before the third day of March, 1854, was, the president of the Philadelphia, Wilmington and Baltimore Railroad Company.

Nevertheless the said defendant, maliciously and wickedly contriving and intending to injure and destroy the character and reputation of plaintiff as a mechanic as aforesaid, and to bring into disrepute his competency, ability, and skill as a mechanic for the constructing buildings, contracting for and superintending the construction of bridges, depots, warehouses, station-houses, and such structures, did maliciously, falsely, and wickedly cause to be printed and published, and exhibited and circulated of and concerning the said plaintiff, in his business aforesaid, the following false and malicious libel, to wit, on the day of 1854, in the following words, to wit: "Philadelphia, March 3d, 1854. S. M. Felton, esqr., prest. Philadelphia, Wilmington and Baltimore Railroad, (meaning Samuel M. Felton, president of the Philadelphia Wilmington and Baltimore Railroad Company, the defendants.) Dear sir, (meaning said Samuel M. Felton:) In reply to your (meaning said S. M. Felton's) note requesting information respecting the character of Philip Quigley (meaning the plaintiff in this suit) as a mechanic, I (meaning John T. Mahoney) beg leave to state, that my (meaning the said John T. Mahoney's) acquaintance with that person (meaning the plaintiff) commenced at the time he (meaning the plaintiff) was engaged putting up the roof of the depot at the corner of Broad and Prime streets, (meaning a certain depot situated at the corner of Broad street and Prime street, in the city of Philadelphia, in Pennsylvania aforesaid.) As a mechanic, in my (meaning the said John T. Mahoney) estimation, he

(meaning the plaintiff) is not entitled to rank as a third-rate workman; in fact, it so far as my experience extends, he (meaning the plaintiff) is unable to make the simplest calculations or geometrical constructions, while his (meaning the plaintiff's) mechanical skill is as meagre as his (meaning the plaintiff's) education is limited. So little confidence do I (meaning the said John T. Mahoney) place in his competency to do justice to any work in the line of a mechanic, that I (meaning the said John T. Mahoney) should be unwilling to entrust him (meaning the plaintiff) with the charge of erecting the commonest building. To his (meaning the plaintiff's) foreman *alone*, Mr. William T. Smith, belongs all the credit to be derived from the successful completion of the work at the new depot, (meaning the depot at the corner of Broad street and Prime street, in Philadelphia aforesaid.) Quigley himself (meaning the plaintiff) was seldom present during the progress of that undertaking, and even when he (meaning the plaintiff) was present, he (meaning the plaintiff) seemed utterly incapable of giving directions to the mechanics, or furnishing assistance to the architect, (meaning the said John T. Mahoney, the architect, and employed on said depot last above mentioned.) If the Company (meaning the defendant) had employed a competent person to take charge of their (meaning the defendant's) work, the work itself would have been executed in a shorter space of time, in a more satisfactory and workmanlike manner, and at a much less expense to the Company, (meaning the defendants.) I (meaning the said John T. Mahoney) am, dear sir, your (meaning John M. Felton) obedient servant, John T. Mahoney, architect, 143 Walnut street, Phild."

And the plaintiff avers that the defendant, knowing the falsehood of the said libel, did, at divers times between the publication thereof and the bringing of this suit, to wit, between the day of 1854, and the bringing of this suit, publish and circulate, and send to divers parts and places and persons, the said libel to the extent of a large number, to wit, the number of one thousand four hundred copies. By means of the committing of which said grievances by the defendants, as aforesaid, the said plaintiff has been and is brought into great disrepute and discredit in his character as a mechanic, as aforesaid, and is and has been greatly injured as a mechanic, as aforesaid, with and among divers citizens of the United States, and with divers companies, and is suspected and believed to have acted without competent skill or ability in the construction of the roof of the said depot, in the said libel mentioned; and has lost divers contracts and employments for the construction of other depots, bridges, station-houses, warehouses, which, but for the said libel so published as aforesaid by the said defendants, he, the said plaintiff, would have been employed to build and construct, and all the gains which would therefore have resulted; and has and is otherwise much injured and damnified in his said character and reputation as a mechanic, as aforesaid, to

wit, at the State of Maryland aforesaid, to the damage of the plaintiff ten thousand dollars, and therefore he brings suit, &c.

REVERDY JOHNSON,
H. WINTER DAVIS,
For Pltff.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-five, being the day of the return of the aforegoing writ, comes into the circuit court here, the said Philip Quigley, by his attorneys aforesaid; and the marshal of the Maryland district aforesaid, to wit, John W. Watkins, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's Return.

"Cepi.

J. W. WATKINS, *U. S. Marshal.*"

And the said Philadelphia, Wilmington and Baltimore Railroad Company being called, appears in court here by William Schley, its attorney.

Rule Plea.

And thereupon, on motion of the said Philip Quigley, by his attorneys aforesaid, it is ruled by the court here, that the said Philadelphia, Wilmington and Baltimore Railroad Company answer to the declaration aforesaid of the said Philip Quigley in the plea aforesaid, or judgment by the court here will be rendered against it in default thereof.

And the said Philadelphia, Wilmington and Baltimore Railroad Company, by its attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the first Monday in November next, and then to answer to the declaration aforesaid of the said Philip Quigley, in the plea aforesaid, and to it; it is granted. The same day is given to the said Philip Quigley also. At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-five, to which said day the said Philadelphia, Wilmington and Baltimore Railroad Company had leave to imparle, and then to answer to the declaration aforesaid of the said Philip Quigley in the plea aforesaid, comes again into the circuit court here, the parties aforesaid by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-six, comes again into the circuit court here the parties aforesaid by their attorneys aforesaid.

And the said Philadelphia, Wilmington and Baltimore Railroad Company offers itself ready for trial in the plea aforesaid. Thereupon the said Philip Quigley, by his attorneys aforesaid, suggests to the court here that he cannot safely proceed now here to the trial of this cause, because, &c. Therefore it is considered by the court here, that the said Philadelphia, Wilmington and Baltimore Railroad Company recover against the said Philip Quigley the sum of its costs and charges by it sustained about its suit in this behalf since the last continuance of the plea aforesaid. And thereupon, with the consent of the parties aforesaid by their said attorneys, and by order of the court here, further process of and upon the premises is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord, one thousand eight hundred and fifty-six, comes again into the circuit court here, the parties aforesaid by their attorneys aforesaid.

Plea.

Whereupon the said Philadelphia, Wilmington and Baltimore Railroad Company, by its attorney aforesaid, defends the force and injury, when, and so forth, and saith that it is not guilty of the premises above charged upon it, as the said Philip Quigley above thereof against it complains, and of this it puts itself upon the country; and the said Philip Quigley, in like manner, &c.

Therefore let a jury thereon appear before the court here on the first Monday in April next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-seven, comes again into the circuit court here, the parties aforesaid by their attorneys aforesaid.

Whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the pannel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid be drawn by ballot; and thereupon the twenty persons drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons

from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury.

John A. Bowen, Jacob Smith, Joseph J. Latty, David Taylor, Eli Hewitt, George C. Morton, Edwin M. Shipley, William A. Lloyd, David E. Price, William E. Salmon, John Hobson, William H. Laley, who, being empanneled and sworn to say the truth in the premises, upon their oath do say:

Verdict.

That the within-named Philadelphia, Wilmington and Baltimore Railroad Company is guilty of the premises within laid to its charge in manner and form as the said Philip Quigley within complains against it, and they assess the damages of the said Philip Quigley, by occasion thereof, to the sum of five thousand dollars current money.

Judgment.

Therefore it is considered by the court here, that the said Philip Quigley recover against the said Philadelphia, Wilmington and Baltimore Railroad Company the said sum of five thousand dollars current money, his damages aforesaid, by the jurors aforesaid, in form aforesaid assessed; as also the sum of for his costs and charges by him about his suit in this behalf expended, &c., to the said Philip Quigley, by the court now here, with his assent adjudged; and the said Philadelphia, Wilmington and Baltimore Railroad Company, in mercy, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said Philadelphia, Wilmington and Baltimore Railroad Company, by its attorneys aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

Defendant's Exception.

PHILIP QUIGLEY
vs.
THE PHILADELPHIA, WILMINGTON and Baltimore Railroad Company.

Evidence of Jacob J. Cohen.

The plaintiff, to sustain his action in this case, proved by Jacob J. Cohen, a competent witness, that said witness is now and has

been, since the formation of the Philadelphia, Wilmington and Baltimore Railroad Company, a director in said company; that he recollects the investigation into the alleged official misconduct of Isaac R. Trimble, late superintendent of said road; that pending that investigation, the proceedings thereon were from time to time reported by the committtee of investigation to the board of directors of said Company; that said board ordered that the proceedings of said committee should be printed, and that copies thereof should be given to the said directors, and to the said Trimble; that witness received some ten or a dozen printed sheets of said investigation; that the reason for printing the same was, because the information might in that way be better imparted to the said directors and to said Trimble; that the president of said Company was present when the board ordered the printing and distribution above stated; that the number of directors of said Ccompany is fifteen; that some considerable time afterwards the witness found several copies of the volumes containing the whole investigation at his office in Baltimore, which office is also that of the Baltimore Fire Insurance Company, of which witness is president; that of the copies received by him, the witness gave one to a gentleman of Baltimore, and retained the rest in his own possession.

Evidence of John Street.

The plaintiff further proved by John Street, a competent witness, that said witness was for a number of years a porter in the service of the Philadelphia, Wilmington and Baltimore Railroad Company in Baltimore; that he knew of a number of the books of the investigation being received at the said Company's depot in Baltimore, at least twenty copies; that witness received them from the ticket office of the Company in Baltimore, some from Mr. Crawford, the agent of the Company, and some from Mr. Woodburn, the ticket agent of the Company, and witness took them to the persons whose names were written on the wrappers in which said books were enclosed; that witness could not remember the names of the persons to whom the books were directed, but they were not all those of directors of the Company.

Evidence of Wm Crawford.

The plaintiff further proved by William Crawford, a competent witness, that said witness is and has been for five or six years the agent of the Philadelphia, Wilmington and Baltimore Railroad Company in Baltimore; that from twenty to twenty-five copies of the book of the investigation into the alleged official misconduct of the superintendent of said road were sent to the Company's office in Baltimore, enclosed in wrappers, and directed to different persons; that these copies came by the train from Philadelphia, but

witness received no instructions concerning them; and that they were distributed according to the directions written upon them.

Evidence of Woodruff.

The plaintiff further proved by Woodruff, that said witness resides at Philadelphia; that by the order of Mr. Felton, president of the Philadelphia, Wilmington and Baltimore Railroad Company, and Spofford, then superintendent of said road, witness, who was at that time in the employment of said Company, and so continued until the 31st of October, 1856, had put up and distributed four or five hundred copies of the book of investigation before referred to; that witness and Mr. Graf, the secretary of Mr. Felton, directed the envelopes of said books to various parties, of whose names Mr. Graf kept a list; that witness delivered the copies when so directed to Adams' Express, to be sent to various cities, and some of them to Europe, and stopped delivering them when he had read in the Baltimore newspapers that Quigley had commenced a suit against the Company; and that when any one applied to witness for a copy of the investigation, he asked the said Felton, who would tell him to give it.

Evidence of James H. Bryson.

The plaintiff further proved by James H. Bryson, a competent witness, that said witness is a printer, residing in the city of Philadelphia; that he contracted with Franklin E. Felton and Arthur Cannon, for the printing of "The Investigation into the alleged misconduct of the late Superintendent of the Philadelphia, Wilmington and Baltimore Railroad Company;" and said Arthur Cannon is the short-hand reporter of the testimony taken in said investigation; that witness printed about 600 copies of the said investigation, and for his part of the work received about $1,900 for the two volumes; that he delivered the said copies to the said Cannon, at the office of the witness, directed by the order of said Cannon to the said Railroad Company's depot, at the corner of Broad and Prime streets, in Philadelphia; that witness received payment in a draft on the bank drawn by Mr. Haddell, chief clerk of said Company, and signed by Mr. Horner, the Company's treasurer.

Evidence of Alfred Horner.

The plaintiff further proved by Alfred Horner, a competent witness, that said witness has been secretary and treasurer of the Philadelphia, Wilmington and Baltimore Railroad Company since January, 1854; that the whole number of volumes of "The Investigation into the alleged misconduct of the late Superintendent"

of said railroad was 1,442, including both the 1st and 2d volumes, of which there remains on hand, in said Company's office in Philadelphia, 54 volumes—that is, of the 1st volume 34, and of the 2d 20 volumes; that the whole amount paid for printing, binding, and press-work of said volumes was $4,328 72; that the bills for the printing and binding of said books were paid by witness as treasurer after said bills were approved by Mr. Felton, president of the said Company, and by Mr. Spafford, the superintendent of said road, according to the usual course in paying bills, and that no accounts showing these items were ever laid before the board of directors of said Company; and that the number of stockholders of said Company, on the 1st day of April, 1857, was 622.

Cross-examined.—On cross-examination, the said Horner proved that at the time of the proceedings had in the matter of said investigation, and ever since, five of the members of the board of directors of said Company, the defendants, were and are citizens and residents of Maryland; that four of them were and are citizens and residents of Delaware; and that some of the stockholders of said Company then and ever since resided and now reside in Delaware, some in Maryland, and most of them in the eastern States.

That he saw these books lying in the Company's office, and in his office, and he has one in his office now. The defendant, then, in pursuance of notice on the part of the plaintiff, produced the minutes of the board of directors of the Philadelphia, Wilmington and Baltimore Railroad Company, and it is agreed that the following extracts from said minutes are in evidence:

Extracts from the Minutes.

1854, January 9.—"On motion, it was resolved that the committee appointed by the last board of directors to investigate the official conduct of the late superintendent, consisting of Messrs. Buckley, Camby, Groome, Kelso, and Thompson, be requested to continue their investigation to a completion, and to report all the evidence to the board of directors, with their opinion respecting the same."

1854, March 14. The president reports:

"The testimony in the case of the late superintendent has all been put before the committee of investigation, and as soon as written out will be placed before the board for their action, and recommended that it be printed for the use of the directors."

"Voted, that the President be authorized to have as many copies printed as he may deem fit, and furnish each member of the board and committee, and also Mr. Trimble, with a copy, and retain possession of the others for the present."

1854, April 20.—The president reports: "In conformity with the request of the chairman of the committee of investigation, the

testimony in that case beyond the 80th page has been distributed only among the committee and Mr. Trimble."

"Passed over, without any order on it."

Evidence of Isaac R. Trimble.

The plaintiff further proved by Isaac R. Trimble, a competent witness, that said witness was employed as engineer and superintendent on the Philadelphia, Wilmington and Baltimore railroad for over ten years, when he resigned the office of superintendent to become the engineer of the bridges, which office was abolished in 1853, when his connection with the road terminated.

That he has known Philip Quigley, the plaintiff, since 1844; that from 1844 to 1853, during the administration of three presidents, said Quigley was employed continuously on said road for the greater part of the time as general foreman of all the carpenters in the Company's service, and in repairing and building the bridges on that road, which had nearly all been repaired or rebuilt by Quigley: that said Quigley was raised to that position by witness, on account of witness's confidence in him; that witness had frequent opportunities of judging of said Quigley's skill as a mechanic; that the duties performed by said Quigley on the said road were particularly important, and witness considers the said Quigley as standing at the head of the list as a mechanic at Wilmington and everywhere else; that witness had tried said Quigley in many ways, and often in pressing emergencies, and never knew him to make a serious mistake of any kind; that he had rebuilt the bridges on the said railroad, and while the work was in progress the regular trains had not been interrupted for a day; that general directions were given by witness, but the detail was carried out by the said Quigley; that the lining out of work was always done by said Quigley, until those under him learned from him, and when anything new was to be done said Quigley himself always lined out the work; that the said Quigley was, in witness's opinion, perfectly competent to put up such a roof as that on the depot at Broad and Prime streets in Philadelphia, and that said Quigley had lined out the rafters for that roof; that the character of said Quigley as a builder was very high, and it could not be otherwise, for the said Quigley had now more work to do than he could well attend to; that witness considered said Quigley, for a man who could not read and write, as he could not, a very extraordinary man.

Cross-examined.—On cross-examination, the said Isaac R. Trimble testified that said witness was in the service of the Philadelphia, Wilmington and Baltimore Railroad Company at the time when the investigation into witness's conduct began, as engineer of the bridges, having previously resigned the office of superintendent; that he had notice of the meetings of the committee of investiga-

tion; that he put in before said committee the letter of Major Swift, on page 382 of the 1st volume of the Investigation; that his object in so doing was to show that Philip Quigley, the plaintiff, was a valuable man and mechanic to the said Railroad Company; that he made it a question as to his value to the road, and the nature of the investigation was such as to require witness to show his value to the road in his own defence, in regard to charges that had been made against him, and for the same purpose he had brought before the committee of investigation, as witnesses, Major Swift, Alexander Campbell, Woodcock, and Swain; that the said letter of Major Swift, and the testimony of Messrs. Swift, Campbell, Woodcock, and Swain, were introduced by witness before the letter of John T. Mahoney, on page 1027 of the 1st volume of the Investigation, was written; that the said Philip Quigley and his gang of men were passed free over the said railroad when engaged in building bridges off the line of said road, in Virginia, Pennsylvania, and the city of Baltimore, and while witness was superintendent of said road, but not with witness's knowledge when about works off the road, but if asked he should have allowed it; that witness considered said Quigley a valuable man, whose services were not adequately compensated by the Company, and therefore that it was necessary to give him privileges, and the proof of this was material to witness's case in the investigation; that the investigation was demanded by the witness; that the witness was a partner in one sense of said Quigley—bridges built by said Quigley off the line of the said railroad—that is, he was to pay me a part of the profits for the patentee for use of the patent right; it was intended to be, but seldom was, a certain proportion of the profits; that witness was the owner of How's patent, and on account of that was to receive, on bridges built by Quigley, a certain sum by the foot for the patent right; that Major Swift is an engineer of the highest standing, and was president of the Philadelphia, Wilmington and Baltimore Railroad Company before Mr. Felton was elected to that office; that he admitted a partnership in bridges off the road so far as the patent right was concerned, his remuneration being so much for each truss or per foot in each bridge.

Evidence of William Graves.

The plaintiff then proved by William Graves, a competent witness, that said witness has resided in Wilmington, Delaware, for the last 12 years, and has been a housebuilder for 20 or 25 years; that he had been acquainted with the plaintiff for many years; that said plaintiff has been very extensively engaged in building bridges, roofs, &c., and has been and is considered a good mechanic and successful workman; that said Quigley was for a number of years employed on the Philadelphia, Wilmington and Baltimore

railroad as a builder of bridges and depots, and that the reputation of said Quigley among mechanics has been and is very high, and witness considers said Quigley as competent to perform any work which he would undertake; that said Quigley is capable of superintending any work properly, and of instructing others how to do it; that witness cannot say that said Quigley could make plans and specifications, but that he could carry them out and instruct others; and that said Quigley is now more extensively engaged in his business of a builder and contractor than he was before 1854. The plaintiff then proved by sundry competent witnesses that said Quigley was a skillful mechanic, an energetic and capable superintendent, and a valuable man on a railroad; that said Quigley had constructed and superintended the construction of a large number of bridges, roofs, and depots, at various places; and that all the said structures had borne all the tests to which they had been subjected.

The plaintiff then offered in evidence certain parts of the book of "the investigation into the alleged official misconduct of the late superintendent of the Philadelphia, Wilmington, and Baltimore railroad, and it is agreed that the following extracts from said book are in evidence on the part of the plaintiff.

From pages 1027 and 1028 on the 1st volume of said book, being part of the proceedings before the committee of investigation on the 4th of March, 1854, I will here put in a letter to Mr. Mahoney, and Mr. Mahoney's reply:

Letter from S. M. Felton, President of the P. W. & B. R. R. Co. to J. T. Mahoney, 3d March, 1854.

PHILADELPHIA, *March* 3, 1854.

J. T. MAHONEY, Esq.,
Civil Engineer and Architect.

DEAR SIR: As you were the architect of the station, corner of Broad and Prime streets, and had some opportunities, during the construction of that building, to become acquainted with the mechanical ability and skill of Philip Quigley, may I ask your opinion of him as a mechanic, and whether, in your estimation, the services of such a man would be peculiarly valuable for a railroad.

Yours, respectfully,

S. M. FELTON,
Prest. P. W. & B. R. R. Co.

A true copy from the original.

CHARLES P. DARE.

Letter from J. T. Mahoney to S. M Felton, Prest. P. W. & B. R., March 3, 1854.

PHILADELPHIA, *March* 3, 1854.

S. M. FELTON, Esq.,
Prest. P. W. & B. Railroad.

DEAR SIR: In reply to your note requesting information respecting the character of Philip Quigley as a mechanic, I beg leave to state that my acquaintance with that person commenced at the time he was engaged in putting up the roof of the depot, at the corner of Broad and Prime streets. As a mechanic, in my estimation, he is not entitled to rank as a third-rate workman; in fact, so far as my experience extends, he is unable to make the simplest calculations or geometrical constructions, while his mechanical skill is *a megre* as his education is limited. So little confidence do I place in his competency to do justice to any work in the line of a mechanic, that I should be unwilling to entrust him with the charge of erecting the commonest building. To his foreman alone, Mr. William T. Smith, belongs all the credit to be derived from the successful completion of the work at the new depot. Quigley himself was seldom present during the progress of that undertaking, and even when he was present, he seemed utterly incapable of giving directions to the mechanics, or furnishing assistance to the architect. If the Company had employed a competent person to take charge of their work, the work itself would have been executed in a shorter space of time, in a more satisfactory and workmanlike manner, at much less expense to the Company.

I am, dear sir, your obedient servant,

JOHN T. MAHONY,
Architect, 43 *Walnut Street, Phila.*

From page 3 *of volume* 1.

It remains for me, in the discharge of my duty as president of the Company, to indicate the points to which, in my judgment, the investigations of the committee should be directed, to enable them to obtain an accurate knowledge of the official conduct of the late superintendent, Mr. Trimble.

1. Whether he has not been engaged in contracts off the line of the road in copartnershlp with Philip Quigley, an employee of the Company?

2. Whether he has not permitted workmen in the employ of Quigley to pass free over the road, while they were employed in work off the line of the road of this Company; and whether said Quigley has not received an unusual and extravagant compensation for work performed for the Railroad Company?

3. Whether he has not permitted materials for work performed

by the said Quigley for other companies, or in places off the line of the railroad, to be carried over the *raid* free of charge?

From page 272, *&c., volume* 1.

Mr. Trimble. I propose, gentlemen of the committee, to examine certain witnesses in relation to the four first inquiries, which I will now read:

The inquiries of Mr. Felton.

"1. Whether he has not been engaged in contracts off the line of the road, in copartnership with Philip Quigley, an employee of the Company?

"2. Whether he has not permitted workmen in the employ of Mr. Quigley to pass free over the road, while they were employed in work off the road of this Company? and whether said Quigley has not received an unusual and extravagant compensation for work for the Railroad Company?

"3. Whether he has not permitted the materials for work performed by the said Quigley, in places off the railroad, to be carried over the road free of charge?

"4. Whether he has not permitted workmen employed and paid by the Railroad Company to labor for himself, or for any other person, or for any other purposes other than the Company's, without compensation to the Company?"

Before calling witnesses upon this subject, I wish to read the following replies, that the committee may fully understand the grounds of my defence—what I admit, and what I deny. As early as the year 1844, I became interested by purchase in Howe's patent for the construction of truss frames for bridges, roofs, &c., with the merits of which I had at an early period become conversant, having constructed numerous bridges on Col. Long's plan of truss, the improvements upon which were in part suggested by the late Col. Whistler and myself, while associated together on the Boston and Providence and other roads; and which led to the investigation of what is now called Howe's patent.

With the full knowledge of your predecessors as president, and also of others in the board of direction, I was pecuniarily interested under this patent. Philip Quigley engaged in contract work with my knowledge and consent, under Howe's patent, about the year 1849; placing foremen in charge of such work, and giving it the necessary supervision himself; dividing his time between such work and that of the Railroad Company, from which he received a per diem allowance when actually at work on the road.

In the profits of these bridges I was interested at different times, in Pennsylvania, Maryland, and Virginia; a fact well known by the officers of the road, and to those of the several roads in which said bridges were erected, and to the public authorities of the city

of Baltimore, at whose solicitation and under whose direction several bridges of iron were constructed over Jones' Falls.

Mr. Quigley claimed the privilege of passing such hands who desired to spend Sundays at home, who lived in Wilmington; this privilege has been accorded to F. Wehr's hands, and all others who worked on the road constantly or occasionally, since my connection with it, as well as before; and whether during work by the day, or by contract.

I continued the practice from considerations of sound policy, as affecting the interests of the road. A man who worked all the week considered it his privilege to return home on Sundays, and if denied him, it would have created a feeling of dissatisfaction highly prejudicial to the interests of the Company he worked for. I concluded to make no distinction between Quigley's men and others, as they were frequently called to work on the road, and at all times considered themselves as road hands, from having been so long in the Company's service. Quigley claimed this privilege for his men on the ground that he was required to keep a party of experienced hands on the road, for whose daily work he, as foreman, was allowed by me twelve and a half cents per day; half the usual rates charged by mechanics. That he was frequently called to examine bridges, direct workmen, and consult with me as to the arrangement of places, &c., for which he made no charge; and, moreover, that I required him, in case of any demand for a large force of men on the road, to bring his hands from distant work off the road at his own cost, and employ them on ours, until the emergency passed. Such cases occurred many times in each year. I can enumerate some of the most prominent, no doubt well remembered by all connected with the Company, viz:

Running the express and cars off the boat at Havre de Grace.

Running freight cars off the boat at Cecil.

Sundry alarms at Principio bridge when danger was apprehended.

Drawbridge at Brandywine thrown off by a vessel.

Failure of pier at same bridge.

Floods at Crum creek.

Floods at Schuylkill.

Closing of the Susquehanna river by ice in the years 1850 and 1852.

Frequent failures of Gray's Ferry bridge, and many other accidents on the road, requiring quick work and a large force.

Mr. Quigley often desired to leave the road, as he found work elsewhere more profitable. His leaving the road would have been regarded by me and others as a great misfortune. It was my wish, as the superintendent, to retain and attach to it one who was so familiar with all its wants, and could so soon apply a remedy for any disarrangement of bridges and draws, always a source of apprehension to travellers, and anxiety to ourselves. I do not hesitate

to say, that long before I had any connection with Philip Quigley in work off the road, I held his skill and devoted attachment to it in so high estimation, as to have often expressed the opinion, that the Company never could compensate him for what he had done, nor replace him if he left it; such men, to all companies, are invaluable.

The good judgment displayed by him in sudden emergencies could not be surpassed. It was no ordinary task to rebuild all our bridges and draws without stopping the ordinary trains a single hour. This was done by his tact and resources, to the extreme gratification, and even admiration, of all the officers of the Company.

It is proper to state, that it is not unusual for a supervisor of work on one road to be allowed to engage in "planning," or other business off the road, either as a favor or from policy in retaining valuable men. It is permitted on the Reading road, the Baltimore and Ohio road, Baltimore and Susquehanna road, Boston and Providence road, Pennsylvania Central road, and I believe more or less, in some shape, on all old roads. For work done by Quigley on this road he has received less prices than those paid in adjoining States. Mr. Felton himself has recommended him to others for work off the road, and was a party to several verbal agreements for contract work made with him on our road. I may here say, that on both occasions when the Susquehanna was closed with ice, Mr. Quigley's personal risk and judgment saved thousands to the Company. In both cases he was the first to cross the river and judge of its safety. Before taking our passengers on the last jam of ice, he fell through repeatedly in crossing the river, sustaining himself by a stout pole. On reaching Havre de Grace, he telegraphed to both cities; and the trains were sent on, and crossed the same day. For this risk and important service I promised him a handsome gratuity in money, which was never paid. I likewise promised him one hundred dollars if he would move Chester bridge, bodily, eight feet to one side, without stopping any passenger train; which he accomplished, but has never demanded the sum promised.

Therefore, in allowing Quigley's men to use the road passes as others used them, I did no more than what I considered was for the advantage of the road, and due to him for long and faithful service. In this I exercised that discretion which every superintendent of a road should use for the benefit of a company in whose interest he feels a deep concern, as all know I felt in ours. I never for a moment thought that my motives could be questioned or could have been misconstrued by any one into a suspicion that I had a pecuniary interest to subserve. In all this matter there never was the slightest attempt, on my part, to avoid an open responsibility, and the fact of their passing was known to every one.

Since this inquiry has been made, I have had the curiosity to

inquire of Mr. Quigley what amount he supposes would have been paid if this privilege had not been granted. He says, deducting what he did actually pay, the amount of fares, if charged at full price, unpaid, would not exceed, in a period of five years, the sum of six hundred dollars. As I have above stated, the Company, in my judgment, obtained in various ways far more than an equivalent; and to have denied him, would have displayed an exceeding want of judgment, by destroying our best claim to his services. Mr. Quigley has always paid the regular freight on all materials sent over the road which were intended for jobs of work off the road. I never made any exception in his favor; and William Hill, the freight agent at Wilmington, informs me that all such freight was charged without exception.

From page 382 *of* 1*st volume.*

Mr. TRIMBLE. I will now put in a letter from the former president of the road, Capt. Swift, with regard to these fares, and this matter of passing the men.

(Mr. Trimble then read a letter, of which the following is a copy:)

Letter from W. S. Swift to Mr. Trimble, dated Boston, 19th December, 1853.

BOSTON, *December* 19, 1853.

DEAR SIR: I have received your letter of the 15th inst. I remember Philip Quigley very well, an ingenious and, as I always supposed, faithful and valuable man to the Company, as bridge builder, wharf builder, &c.—the kind of man most useful in an emergency, such as the destruction of a bridge, wharves at Havre de Grace, &c., works liable to be injured or destroyed at any time, and requiring for their restoration or repair, skill, energy, and willingness to exert both, in case of need, at a moment's warning.

Such a man I believe Quigley to be, and had I, as president of the Company, been asked to sanction the passing of that man over the road, back and forth free, I should have done it unhesitatingly, considering that the Company received quid pro quo for the privilege granted, in receiving not only his good will, but in giving to the Company a claim to his services, upon any such emergency as I have referred to, whenever they might demand them.

For the same reason I should consider the act of the superintendent of the road justifiable and entirely proper. The practice on this road is to do just such things every week, and for similar reasons, by both president and superintendent.

With regard to passing Mr. Quigley's men over the road free, I answer, with some qualifications—I should, for example, as the manager of a road, desire to have at command just such a man as

Quigley, or the man at the ferry-boat, (his name I have now forgotten,) for, as generally happens in railroad disasters, the remedy is required to be speedily applied; and simple man power, without a competent head to direct their efforts, in case of accident, would avail but little; therefore, to have the control of such persons as I have named above, and to induce them to hire upon the line of the road, I should be very likely to offer them all reasonable facilities of passing back and forth, provided it involved no positive outlay of money by the Company; considering, as before remarked, that a full equivalent would be rendered in services for such privileges.

Men belonging to Mr. Quigley, engaged in building bridges or other works off the line of the road, but living on the road, and having families, which they desired to be with on Sunday, I should not have refused permission to pass free, under proper regulations as to the number of persons passed, the times, &c. And this I should do, for the same reasons which I have stated would govern me in the case of Mr. Quigley himself, viz: simply as a matter of interest, because I could see that it would be returned in services; such favors accorded, under proper restrictions, might be returned to the Company fourfold.

These replies to the two questions you have asked me are precisely as I should give, in regard to the western railroad, if put to me by the proprietors of it, this day; as I never saw, nor did I ever hear of a case, while I was connected with the Philadelphia, Wilmington and Baltimore railroad, as its president, in which you had abused the privilege of passing persons, back and forth, over the road—a privilege appertaining to all superintendents. I cannot be more minute in my answers than I have been. My object is to state the motives which would actuate me in a similar case, and which, I presume, would actuate you, as one of the guardians of the interest of the owners of the road.

Yours, respectfully,

W. S. SWIFT.

From page 694 *of vol.* 1, *being part of the examination of Capt. Swift by I. R. Trimble, at the session of Committee of January* 28, 1854.

Q. Did you know Philip Quigley; and what was his character as a man and mechanic?

A. I know him passably well; more by reputation, and what I heard, than personally, until I had been here some twelve months. I then had occasion to take more particular notice of him. I did consider him a very useful man to a corporation, as a man of ingenuity, promptness, and willingness.

Q. Such a man as you regard as valuable in the service of a railroad company?

A. I should regard him as an exceedingly valuable man.

Q. Was he not regarded as a well-tried and faithful workman, and of great skill and judgment in all emergencies?

A. I did so understand that his peculiar forte was, in taking hold of a difficult case and managing it skillfully.

Q. Did you find that your own experience confirmed this?

A. I did, as far as I had occasion to exercise it.

Q. Did you read my replies to interrogatories respecting the passing of Quigley's men; and did you consider the reason given, such as showed the proper discretion which a general superintendent should use to promote the interest and sound policy of the road?

A. I did.

Q. And do you consider that improper motives could be justly imputed to me, under the circumstances?

A. I considered that the motives set forth, for the privileges granted to Mr. Quigley, as a sufficient reason; that is, so that Quigley's privileges of passing back and forth on the road were returned to the Company in his services and willingness to be employed by them when called upon in an emergency; that he was a very useful man in such cases, and that it was desirable, for these reasons, should have those privileges, if it was necessary to retain him here.

From page 966 *of vol.* 1, *being part of the examination of Alexander Campbell, by I. R. Trimble, at the session of Committee, March* 3, 1854.

Q. Can you state the reason why his men were passed to and from jobs off the road?

A. Mr. Quigley was too valuable a man to be spared; he was almost a necessity to the road, in its then existing circumstances. He was too valuable for the Company to pay him a salary sufficient to induce him to give his whole time, and the compromise or expedient was resorted to of giving him an opportunity to do for himself off the road, with a full understanding that he was at all times to be at the call of the Company, in case of emergency, and his men also.

Q. Were his men passed with the knowledge of the officers of the road?

A. It was a matter of common general knowledge that Quigley's men travelled on the road without paying fare. I knew it.

From page 225 *of* 2*d vol. Report of the Committee of Investigation.*

To the president and directors of the Philadelphia, Wilmington and Baltimore Railroad Company.

The committee appointed by the board of directors of the Phila-

delphia, Wilmington and Baltimore Railroad Company, to inquire into certain alleged misconduct on the part of Isaac R. Trimble, esq., late superintendent of the Philadelphia, Wilmington and Baltimore railroad, respectfully beg leave to report, that after a patient hearing of the testimony produced before them on the part of the president of this Company, and of the said Isaac R. Trimble, esq., and of such explanations thereof as each of the parties were pleased to make, they have proceeded to consider the same, and now submit the result of their deliberations.

The subject having been presented in the form of inquiries specifically setting forth the nature of the alleged acts of misconduct, the committee have come to the conclusion, that the simplest and most proper mode of discharging their duty will be to give as short and succinct an answer to each of the proposed inquiries as they can, consistently with a clear expression of their views.

1. To the first inquiry, we answer in the affirmative; for the fact is admitted distinctly and unequivocally by Mr. Trimble himself, and also proved by the testimony of Mr. Quigley and other witnesses.

2. To the first branch of the second inquiry, we also answer affirmatively; for the fact is admitted by Mr. Trimble himself, and proved, too, by the testimony of many witnesses. But to the second branch of this inquiry, we answer in the negative, unless the passing of Quigley's men free over the road is to be considered in the light of unusual and extravagant compensation; in no other way do we think that the proof establishes that point.

3. The third inquiry does not appear to the committee to be clearly proved by any witness, except in regard to some stone sent from Cecil to Baltimore, as to which Mr. Windle swears it was sent free by order of Mr. Trimble.

The committee are aware that there is upon this general point some conflict of testimony. As for example, the manifest books contain entries of divers acticles sent over the road, for Mr. Quigley, manifested free. But the accuracy of these entries in the manifest books is materially impaired by the entire omission to enter in them at all many articles which actually did go over the road for Quigley, for which he paid freight, and for which payments he has produced the receipts of the agents. The committee do not feel willing, therefore, to rely upon the evidence of books so clearly inaccurate in many respects as these books, to implicate the official conduct of one who has so long enjoyed the confidence of the Company. There is, besides, much testimony to show that on many occasions express directions were given by Mr. Trimble to the different agents, to charge freight on all articles sent for Quigley, to be used off the road. The committee do not mean to say that articles for Quigley have not passed free over the road, besides the stone mentioned by Windle, but only that they are not satisfied that Mr. Trimble knew the fact, or connived at the practice.

The plaintiff then offered the 17th annual report of the president and directors of the Philadelphia, Wilmington and Baltimore Railroad Company to the stockholders of said Company, dated January 8, 1855, and it is agreed that the following passage taken from said report is in evidence on the part of the plaintiff:

From the 17th Annual Report.

"The committee appointed to investigate the alleged official misconduct of the late superintendent have closed their labors, and made their report to the board of directors. In this report, they answer affirmatively, either directly or by implication, nearly all the inquiries that were suggested for their consideration. Some of these inquiries or allegations the late superintendent admitted before *before* the committee as true, *as true*, and attempted to justify the practices, after they had been proved by the Company. The report of the committee is appended to this report. The testimony has been printed, and the summing up of the whole case on both sides is now in the hands of the printer, and will be ready in a short time. The whole case will be distributed among the stockholders for their information, and they will judge whether the investigation was called for by the state of facts therein developed. It is believed that the information and the facts brought to light will prove highly beneficial, not only to this road, but to the railroad interest generally of the country. The investigation was a long and laborious one, and to your president, who conducted it personally on behalf of the Company, anything but agreeable. Nothing but a most imperative sense of duty to the road and its stockholders induced him to undertake it. The labor, the anxiety, and the overwhelming weight of responsibility incident to it, will never be known to any party but himself. If, however, he has been instrumental in reforming one abuse, his labor will not have been in vain. He regrets its necessity, and especially its occurrence at a time when the business of the road and its various works demanded his whole time, and that of the officers under him."

Evidence of Jacob J. Cohen, Enoch Pratt, Columbus O'Donnell, Joseph C. Gilpin, and Thomas Donaldson.

The defendant then proved by Jacob J. Cohen, Enoch Pratt, Columbus O'Donnell, Joseph C. Gilpin, and Thomas Donaldson, that the said witness had been and were directors of the Philadelphia, Wilmington and Baltimore Railroad Company, from January, 1854, to the time of their examination; that they were generally present at the meetings of the board, but not always; that they were all present when the said 17th annual report was adopted by said board; that the action of said board, in regard to the printing and distribution of the testimony taken before the committee of

investigation, as shown by the minutes offered in evidence by the plaintiff and by the said annual report, was not, so far as said witnesses, or any of them, influenced by malice on the part of any member of that board toward the said plaintiff; that neither of said witnesses had any malice toward said plaintiff; and that neither of said witnesses knew, at the time of adopting the said report, that there was such a letter in existence as that of John T. Mahony, printed on the 1027th page of the proceedings of the committee of investigation.

Evidence of John T. Mahony.

The defendant then proved by John T. Mahony, a competent witness, that said witness is an architect residing in Philadelphia, having full employment in his profession, and that he has planned and superintended the construction of a number of churches, depots, and other buildings; and that witness was architect of the depot at Broad and Prime streets, in Philadelphia, but not of the roof of that depot; that the letter to S. M. Felton printed on the 1027th and 1028th pages of the 1st volume of Investigation into the official misconduct of the late superintendent of the Philadelphia, Wilmington and Baltimore railroad, signed John T. Mahoney, was written by witness; that from the intercourse said witness had with Philip Quigley, the plaintiff, when the latter was engaged on the roof of said depot, and from other intercourse with him subsequently, said witness formed deliberately the opnion concerning said plaintiff, which is expressed in the said letter, and that opinion witness still entertains; that in witness's opinion said Quigley cannot make plans, specifications, or calculations; and on cross-examination, the said witness said, that the work on the depot and roof at Broad and Prime was well done; that the simplest carpenter could put up the roof at said depot, and that said Quigley was competent to put it up, as it required simply the skill of a rigger; that by the expression, "the commonest building," in said letter, witness did not mean a hut or hovel, but an ordinary three-story house.

The defendant then proved by sundry competent witnesses, themselves mechanics, that they had known the said Quigley, the plaintiff, a number of years; that they had worked with and under said Quigley at various bridges, roofs, and other buildings, both on the line of the Philadelphia, Wilmington and Baltimore railroad, and at other places; that in their opinion the said Quigley was a poor mechanic; that said Quigley could not write, or make specifications, or draw plans, or make calculations; that he did not understand plans and specifications; that the reputation of said Quigley at Wilmington was, that said Quigley was not a mechanic; that on the works under charge of said Quigley general directions only were given by said Quigley, but no instructions in detail; and that

the work was in all cases lined out and performed by the foreman of said Quigley, and the other mechanics in his service.

Evidence of Baldwin Keech.

The defendant then proved by Baldwin Keech, a competent witness, that said witness knows the plaintiff, and has known him many years; that the business of said plaintiff as a contractor and builder has largely increased since the beginning of the year 1854; that said plaintiff now employs double the number of men than he did then; that in opinion of said witness, said plaintiff has not been at all injured by the letter of Mahoney contained in the book of the Investigation offered in evidence by the plaintiff; that after the publication of the said book, witness had several conversations with said plaintiff in reference thereto, in which conversations the said plaintiff told witness that the book had not hurt him, the plaintiff, but had benefited him in his business; that witness thinks that Quigley sustained no injury, but if the statement had been believed to be true, and he had had no money to live on, he would have been very much injured.

Evidence of Alexander Kelly.

The defendant further proved by Alexander Kelly, a competent witness, that about fifteen months ago the said witness was travelling in the cars with the said plaintiff, and that said plaintiff, in speaking of the investigation concerning the affairs of the Philadelphia, Wilmington and Baltimore Railroad Company, told witness that he, the said plaintiff, had done a great deal better in his business since leaving said Railroad Company's service, and that the said investigation had been of advantage to him.

The defendant then offered in evidence the following laws of the States of Pennsylvania, Delaware, and Maryland; and it is agreed that the same be read as part of this bill of exceptions, from the printed statutes of said *said* States.

The act of Assembly of Pennsylvania, entitled "An act authorizing the Governor to incorporate the Philadelphia and Delaware County and Southwark Railroad Companies," approved on the 2d of April, 1831, and its supplements. The act of Assembly of Delaware, entitled "An act to incorporate the Wilmington and Susquehanna Railroad Company," passed January, 1832, and its supplements. The act of Assembly of Maryland, entitled "An act to incorporate the Delaware and Maryland Railroad Company," being 1831, chapter 296, and its supplements. The act of Assembly of Maryland, entitled "An act to incorporate the Baltimore and Port Deposit Railroad Company," being 1831, ch. 288, and its supplements. The act of Assembly of Maryland, entitled "An act to authorize the union of the Baltimore and Port Deposit Railroad

Company, the Wilmington and Susquehanna Railroad Company, and the Philadelphia, Wilmington and Baltimore Railroad Company, being 1837, ch. 30.

The defendant then offered in evidence the "Articles of union of the Philadelphia, Wilmington and Susquehanna, and the Baltimore and Port Deposit Railroad Companies," of which the following is a copy:

B.

Articles of Union of the Philadelphia, Wilmington and Baltimore, the Wilmington and Susquehanna, and the Baltimore and Port Deposit Railroad Companies.

Articles of union made and concluded this fifth day of February, in the year of our Lord one thousand eight hundred and thirty-eight, between the Wilmington and Susquehanna Railroad Company, the Baltimore and Port Deposit Railroad Company, and the Philadelphia, Wilmington and Baltimore Railroad Company, by virtue of and in pursuance of an act of the General Assembly of the State of Delaware, entitled "A further supplement to an act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" and an act of the General Assembly of Maryland, entitled "An act to authorize the union of the Baltimore and Port Deposit Railroad Company, the Wilmington and Susquehanna Railroad Company, and the Philadelphia, Wilmington and Baltimore Railroad Company," and of an act of the General Assembly of Pennsylvania, entitled "An act supplementary to the act incorporating the Philadelphia, Wilmington and Baltimore Railroad Company."

First. The said three corporations are hereby united, and from and after the first election of directors hereinafter provided for in the third article, shall be merged into one body corporate, under the name and style of "The Philadelphia, Wilmington and Baltimore Railroad Company," and the stocks of the said three corporations, so united, shall form one common stock; and all the estate, real, personal and mixed, and the rights, privileges, advantages, and immunities belonging to each of the said corporations, become and be vested in the said body corporate, and the debts and liabilities of each of the said corporations shall be deemed, and are hereby declared to be the debts and liabilities of the said body corporate.

Second. The stock of the said body corporate is hereby divided into shares of fifty dollars each; of which the present stockholders of the Wilmington and Susquehanna Railroad Company are hereby declared to be entitled in all to sixteen thousand shares; the present stockholders of the Baltimore and Port Deposite Railroad Company to nineteen thousand shares; the present stockholders of the

Philadelphia, Wilmington and Baltimore Railroad Company to ten thousand shares, including those forfeited heretofore, which are to be held for the use of this corporation; and certificates of stock, as may be regulated by the president and directors of the said body corporate, shall be granted and issued accordingly to each of the said stockholders, so soon as the said stockholders shall have paid up all instalments due upon the shares of stock held by them respectively, and shall have surrendered the certificates previously issued to them as stockholders in the respective companies hereby united. And the capital stock of the said corporation shall consist of such number of shares as aforesaid, subject to the right and privilege of increasing the same from time to time, according to the provisions of the respective charters of the said companies hereby united.

Third. There shall be fifteen directors to manage the affairs and business of the said body corporate; and a meeting of the stockholders of the three corporations hereby united, for the election of the first directors, shall be held at Wilmington, on Wednesday, the fourteenth day of February instant, of the time and place of which meeting notice shall be given by the present president of the Wilmington and Susquehanna Railroad Company, by advertisement, in at least three newspapers; at which meeting fifteen directors shall be elected by the said stockholders, voting in person or by proxy, and each share being entitled to one vote; and the directors so elected shall hold their offices until the ensuing annual meeting of the stockholders, and until their successors are elected.

Fourth. The stated meetings of the stockholders shall be held in the city of Wilmington, on the second Monday in January in each and every year hereafter, at which time and place an annual election of directors shall be made by the stockholders, and fifteen days' notice of the time and place of each stated meeting shall be given by advertisement in at least three newspapers. The election shall be by ballot, and each of stock shall entitle the holder thereof to one vote, to be given either in person or by proxy, provided it has been held for three calendar months before the time of voting. The directors shall, after the first and each subsequent election, choose by ballot one of their own number to be president of the said body corporate, who shall serve one year, or until the election of a successor. The omission to hold an election for directors at the time prescribed shall in no wise affect the said body corporate; but such election may be had upon due notice from the said president and directors, published as aforesaid, at any time within three months after the time so prescribed as aforesaid. The directors shall hold their offices for one year, and until a new election shall take place; and the powers of the said president and directors shall be the same as are now vested in the president and directors of the Wilmington and Susquehanna Railroad Company. The president may be removed from his office by a vote of two-thirds

of all the directors. The directors may, in each year that they may deem it advisable, elect a vice-president from their own number, who, in the absence of the president, shall have all the powers of the president, and shall be liable to removal in like manner as the president. Five directors shall constitute a quorum for the transaction of business. The directors may, if they shall deem it advisable, appoint an executive committee, consisting of six members from the States of Pennsylvania, Delaware, and Maryland, for such time and for the performance of such duties as any resolutions of the directors, or any by-law, may prescribe and assign; and the president, or vice-president, and any two members of such committee, shall constitute a quorum thereof. All officers and agents of the corporation, other than directors, shall be appointed by the directors, who may prescribe and exact such security as they may deem proper for the performance of their duties.

Fifth. The stated meetings of the board of directors shall be held alternately at Wilmington and Philadelphia; and special meetings may be held either at Wilmington, Philadelphia, or Baltimore. The corporation shall have offices opened at Wilmington, Philadelphia, and Baltimore, at either of which transfers of stock may be made, under such regulations as the board of directors may prescribe.

Sixth. All by-laws shall be made, altered, or repealed only by a majority, consisting of not less than two-thirds of the directors, it being understood that no by-law shall contravene any of those terms or stipulations; and the existing by-laws of the Wilmington and Susquehanna Railroad Company shall, until altered or repealed as aforesaid, be the by-laws of this corporation; and all rules and regulations necessary for the management and conduct of the business of the Company, not provided for in a by-law, may be made by the directors.

In witness whereof, the said corporations, parties to this agreement, have caused their respective corporate seals, attested by the signatures of their respective presidents, to be hereunto affixed the day and year first hereinbefore written.

[SEAL.] JAMES PRICE,
President of the Wilmington and Susquehanna R. R. Company.

[SEAL.] J. J. COHEN, JR.,
President of the Baltimore and Port Deposite R. R. Company.

[SEAL.] MATTHEW NEWKIRK,
President of Philadelphia, Wilmington, and Baltimore R. R. Company.

And it is agreed that said articles of union were made and executed on the day of their date, under the authority claimed under, and in pursuance of the directions of the several acts of Assembly therein recited, and were entered into after the primary meetings

of stockholders as required by said several acts, and were certified and recorded as required by said several acts.

The defendant then offered in evidence "The articles of union of the Wilmington and Susquehanna, and the Delaware and Maryland Railroad Companies," of which the following is a copy:

C.

Articles of Union of the Wilmington and Susquehanna, and the Delaware and Maryland Railroad Company.

These presents certify to the recorder of deeds of Newcastle county, that at a meeting of the stockholders for "the Wilmington and Susquehanna Railroad Company," and of "the Delaware and Maryland Railroad Company," held pursuant to due and legal notice in that behalf given, at the office of the Wilmington and Susquehanna Railroad Company, in the city of Wilmington, on the eighteenth day of April, in the year of our Lord eighteen hundred and thirty-six, the holders of a major part in amount of the stock of each of the said companies attending in person, or by proxy, at that time and place, did decide that the said railroad companies should be united, and together form one body politic and corporate, by the name, style, and title of "The Wilmington and Susquehanna Railroad Company," upon the following terms and stipulations deemed by them proper and expedient:

First. There shall be fifteen directors to manage the business and affairs of the corporation, who shall be elected by the stockholders at this present meeting, and at each annual meeting hereafter; and they shall elect, by ballot, one of their number as president of the company, within three days after each annual election of directors.

Second. The annual meetings of the Company shall be held in the city of Wilmington, on the second Monday of January, in each and every year hereafter; and the officers elected at this meeting shall hold their offices till the first annual meeting hereafter, and until their successors be duly chosen.

Third. All officers and agents of the said Company, other than the directors, shall be elected or appointed by a majority of the directors.

Fourth. All by-laws shall be passed, made and altered, or repealed by a majority consisting of not less than two-thirds of the directors; provided that no by-law shall contravene any of those terms and stipulations. And the by-laws of "The Wilmington and Susquehanna Railroad Company" shall be the by-laws of this Company until altered or repealed by two-thirds of the directors as aforesaid.

Fifth. All rules and regulations necessary and proper for the management and conduct of the business and affairs of the Com-

pany, not provided for in a by-law, may be made by the directors, and the business and affairs of the Company shall be conducted and managed by them; and five directors shall constitute a quorum for the transactions of business.

Sixth. All the existing stockholders in either of the said Companies hereby united shall be and become henceforth stockholders in this Company, and the corporate seal of the Wilmington and Susquehanna Railroad Company shall be and be used as the corporate seal of this Company until otherwise provided by a by-law; and certificates shall be issued to the stockholders for their respective shares in the capital stock of this Company, upon the surrender of their respective certificates, for the same number of shares of stock in either of the Companies hereby united.

In testimony whereof, we, William Seal, chairman, and Edward W. Gilpin, secretary of the said meeting, have hereunto subscribed our names this eighteenth day of April, eighteen hundred and thirty-six.

WILLIAM SEAL, *Chairman.*

Attest:
E. W. GILPIN, *Secretary.*

The president and directors of the Wilmington and Susquehanna Railroad Company, and the president and directors of the Delaware and Maryland Railroad Company, certify that the foregoing certificate to the recorder of deeds for Newcastle county contains a *strue* statement of the proceedings and acts of a meeting of the stockholders of the Wilmington and Susquehanna Railroad Company, and of the Delaware and Maryland Railroad Company, called by due and legal notice from the president and directors of each of the said Companies, and held at the time and place stated in the said certificate.

Witness the corporate seal of the Wilmington and *and* Susquehanna Railroad Company, and the corporate seal of
[SEAL.] the Delaware and Maryland Railroad Company, this
[SEAL.] eighteenth day of April, in the year of our Lord one thousand eight hundred and thirty-six.

JAMES CANBY,
President of the Wilmington and Susquehanna Railroad Company.

MATTHEW NEWKIRK,
President of the Delaware and Maryland Railroad Company.

Attest:
W. P. BROBSON,
Secretary of the Wilmington and Susquehanna, and the Delaware and Maryland Railroad Companies.

STATE OF DELAWARE,
New Castle County, ss:

Recorded in the office for recording deeds, &c., at New Castle, in and for the county of New Castle, in book V., vol. 14, page 271, &c.

[SEAL.] Witness my hand and seal of office, at New Castle, April 19, A. D. 1836.

JNO. WILEY, *Recorder.*

And it is agreed that said articles of union were made and executed on the day of their date, under the authority claimed under and in pursuance of the directions of the several acts of Assembly therein recited, and were certified and recorded as directed by said several acts.

Whereupon the defendant by its counsel prayed the court to instruct the jury as follows:

Defendant's Prayers.

PHILIP QUIGLEY
v.
The PHILADELPHIA, WILMINGTON and Baltimore Railroad Company.

The defendant, by its counsel, prays the court to instruct the jury, as follows:

1. That the defendant is not liable in this suit, even if they shall find, from the evidence in the cause, that the book offered in evidence by the plaintiff was published and circulated by direction of the board of president and directors of the defendant.

2. That if the jury shall find, from the evidence in the cause, that at a meeting of the board of president and directors of the defendant, held on the 8th day of November, 1853, a committee of five directors was appointed to investigate certain alleged acts of official misconduct of the late superintendent of the defendant's railroad, and that said late superintendent was then an officer in the service of the defendant, and assented to such proposed investigation; and shall further find that said committee, in the discharge of the duties of said appointment, examined witnesses, and took documentary and other evidence; and shall further find that it become and was, or was deemed to be, a material question, during the proceedings on said investigation, whether or not the plaintiff, Philip Quigley, had or had not been allowed unusual or improper facilities by the said late superintendent, in the transportation, without any charge therefor, of the said Quigley himself and his workmen and materials, on and over the railroad of the defendant,

times when said Quigley was engaged in work in which the defendant was not interested in any manner; and shall further find that it became and was, or was deemed to be, a material question, whether the said Quigley was or was not a person to whom it was expedient to afford extraordinary privileges, on the ground of the alleged great value of his services as an employee of the defendant; and shall further find that said late superintendent put in, during the proceedings of such investigation, the letter of Captain Swift, which has been read in evidence, dated Boston, December 19, 1853, and also gave in evidence the testimony of said Capt. Swift, and of Alexander Campbell, which have been read in evidence; and shall further find that afterwards the letter of J. T. Mahony, dated March 3, 1854, was offered and received in evidence; and shall further find that all the testimony taken by said committee (including said letters) was reported by said committee of investigation to the board of president and directors of the defendant; and shall further find that the same was directed to be printed, as shown by the resolution offered in evidence, and dated 14th March, 1854, and that said resolution was honestly passed, and for the bona fide purpose of enabling the directors and said late superintendent to have the proceedings, so reported by said committee, in a form convenient for the perusal and proper understanding of the same, and not from any malice or ill-will toward the plaintiff; and shall further find that said book as published is a full, true, and accurate statement of all the said proceedings, and that no distribution of said book was at any time authorized by said board beyond the limit prescribed in said resolution, and as indicated in the report of the president, offered in evidence by the plaintiff, dated 8th January, 1855, then the said publication was a lawful publication, and the defendant is not liable therefor to the plaintiff, even if they shall find from the evidence that more copies were in fact circulated by some officer or officers, or servant or servants of the defendant than the number so authorized by the board of directors of the defendant.

3. That, in considering the hypothesis of the second prayer of the defendant, the jury ought to find that the said publication was directed, "not from any malice or ill-will towards the plaintiff," unless they shall find from the evidence in the cause that the same was directed from express malice on the part of said board, and that the burden of proof is on the plaintiff to establish such express malice on the part of said board.

4. That there is no evidence in the cause from which the jury can find such express malice, as is supposed in the hypothesis of the defendant's third prayer.

5. That if the jury shall find that the plaintiff is a citizen of the State of Delaware, and that the defendant is a corporation existing as well under the laws of Pennsylvania and the laws of Delaware, as well as under the laws of the State of Maryland, and some of

its stockholders, at the time of the commencement of this suit, resided in each of said three States of Pennsylvania, Delaware, and Maryland, and that some of its directors resided at that time in each of said three States, then the suit is not within the jurisdiction of this court, and the plaintiff is not entitled to maintain the present suit. (Rejected.)

But the said court refused to grant the said prayers, or any of them, and rejected all and each of said prayers, and gave the following instructions to the jury:

Court's Instructions.

1. If the jury find from the evidence in this case that the defendants, by the president and directors of said Company, published the letter from John T. Mahony to S. M. Felton, president, &c., dated March 3, 1854, in the declaration mentioned, and that any or all of the statements in the said letter respecting the plaintiff in his trade and occupation are false; and shall further find that the said president and directors, at the annual meeting of the stockholders of said Company, held 8th January, 1855, reported to the said stockholders their action in the premises, and that the proceedings of the committee of investigation (which contained the said letter) were then being printed, and as soon as printed would be distributed to the stockholders, and that said report was accepted by the stockholders; and if the jury shall further find that after the meeting of the stockholders had adjourned, the president and directors of said Company distributed the book containing the said letter among the stockholders of this Company, or any of them, then the jury may find for the plaintiff.

2. And if the jury find for the plaintiff under the first instruction, they are not restricted in giving damages to the actual positive injury sustained by the plaintiff, but may give such exemplary damages, if any, as in their opinion are called for and justified in view of all the circumstances of this case, to render reparation to plaintiff, and act as an adequate punishment to the defendant.

To which refusal of the court to grant said several prayers offered on the part of the defendant, and to the refusal of the court in respect of each several prayer, and to the instructions so given, the defendant by its counsel prayed leave to except, and prayed the court to sign and seal this its bill of exceptions, according to the form of the statute in such case made and provided, which is accordingly done this twentieth day of April, 1857.

WILLIAM F. GILES. [SEAL.]

And now here, at this day, to wit, the twentieth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, the said Philadelphia, Wilmington and Baltimore Railroad Company produced to the said circuit court here the writ of the United

States of America for the correcting of errors of and upon the *pemises*, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States to the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court, before you or some of you, between Philip Quigley, plaintiff, and the Philadelphia, Wilmington and Baltimore Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Philadelphia, Wilmington and Baltimore Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

[SEAL.]

Witness the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-six.

Issued 20th April, 1857.

THO. SPICER,
Clk Circ't Ct.

In pursuance whereof, and according to the form and effect of the statute in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

* * * * * * *

The United States of America to Philip Quigley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein the Philadelphia, Wilmington and Baltimore Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Philadelphia, Wilmington and Baltimore Railroad Company, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this third day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

WILLIAM F. GILES. [SEAL.]

I acknowledge notice of the above citation.

H. WINTER DAVIS,
Att'y for Plff.

4th June, 1857.

Writ of Error Bond.

Know all men by these presents, that we, Enoch Pratt, Columbus O'Donnell, and Jacob J. Cohen, all of the city of Baltimore, and State of Maryland, are held and firmly bound unto Philip Quigley, a citizen of the State of Delaware, in the just and full sum of ten thousand dollars, lawful money of the United States, to be paid to be said Philip Quigley, his heirs, executors, administrators, or assigns, to which payment well and truly to be made and done we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this first day of June, in the year of our Lord one thousand *one thousand* eight hundred and fifty-seven.

Whereas at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-seven, the said Philip Quigley, by the judgment of the same court, recovered against the said Philadelphia, Wilmington and Baltimore Railroad Company the sum of five thousand dollars for his damages, as also his costs and charges by him laid out and expended in the prosecution of his said suit.

And whereas the said Philadelphia, Wilmington and Baltimore Railroad Company hath sued out the writ of the United of America for the correcting of errors, and a citation directed to the said

Philip Quigley, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the judgment so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf.

Now the condition of the foregoing obligation is such, that if the said Philadelphia, Wilmington and Baltimore Railroad Company shall well and truly prosecute with effect its said writ of error, and pay unto the said Philip Quigley, his heirs, executors, administrators or assigns, his damages, costs and charges aforesaid, adjudged unto him by the said circuit court, and also all such damages, costs and charges as may be awarded unto him by the said Supreme Court of the United States, in case it shall fail to make good its said plea, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

ENOCH PRATT, [SEAL.]
COLUMBUS O'DONNELL, [SEAL.]
J. J. COHEN, JR. [SEAL.]

Signed, sealed, and delivered in presence of—
EDW. O. SLOAN,
TH. DONALDSON.

Bond approved June 3, 1857.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto [SEAL.] subscribe my name, and affix the seal of the said circuit court, this third day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

THO. SPICER,
Clk Cir't Ct.